State of Bihar & Another

Vs

Maharaja Pratap Singh Bahadur

Civil Appeal No. 157 of 1967

(R. S. Bachawat, K. S. Hegde JJ)

11.04.1968

JUDGMENT

BACHAWAT, J. -

This appeal is directed against an order allowing a writ petition under Art. 226 of the Constitution. Maharaja Pratap Singh Bahadur was the proprietor of the estates collectively known as the Gidhaur estate, in Monghyr district. On the publication of a notification under s. 3 of the Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950) on July 24, 1953 the Gidhaur estate and the interests of the Maharaja therein vested in the State of Bihar. The Maharaja was receiving a permanent malikana allowance of Rs. 5743/14/6 annually in two equal six monthly instalments as shown in annexure "A" to the writ application. The registers and rolls of the recipients of the malikana maintained by the Collector of the district since a long time past show that the successive proprietors of the Gidhaur estate were receiving the malikana for a long time past. The State of Bihar stopped payment of the malikana allowance from April 1, 1958 on the ground that the proprietary interests of the Maharaja in the Gidhaur estate vested in the State and consequently his right to the malikana was extinguished.

The Maharaja alleged in the writ petition that the permanent malikana was payable irrespective of his proprietary rights in his estates notified under sec. 3 and was not income or rent from those estates nor a charge or incumbrance on them. He alleged that the stoppage of the payment of the malikana was illegal and asked for a writ directing the State to make payment of the malikana. The State did not file any return to the petition. The High Court held that the Maharaja's right to the malikana was not an intermediary interest in the Gidhaur estate and did not cease with the extinction of his proprietary right in the estate. Accordingly, the High Court issued a writ in the nature of mandamus commanding the State of Bihar to pay the malikana due to the Maharaja from April 1, 1958. The State of Bihar has filed this appeal on a certificate granted by the High Court.

Section 2 of the Bihar Land Reforms Act is the definition section. Section 2(i) defines an estate to mean any land included under one entry in any of the general registers of revenue paying and revenue free lands and includes a share of or in any estate. Section 2(jj) defines an "intermediary" in relation to any estate or tenure to mean a proprietor, tenure-holder, under tenure holder and trustee. Section 2(jjj) defines an "intermediary interest" as meaning the interest of an intermediary in an estate or tenure. Section 2(o) defines "proprietor" to mean a person holding in trust or owning for his own benefit an estate or part of an estate. Section 2(r) defines a "tenure holder" to mean a person who has acquired from a proprietor or another tenure holder the right to hold land for the purpose of collecting rent or bringing it under cultivation by establishing tenants on it and includes inter alia the holder of a tenure created for maintenance of any person. Section 2(q) defines tenure to mean

interest of a tenure holder or under tenure holder. Under section 2A the expressions "proprietor or tenure-holder" and "estate or tenure" mean and include "intermediary" and the "intermediary interest" respectively. Section 3(1) states that the State Government may, from time to time, by notification declare that the estates or tenures of a proprietor or tenure-holding, specified in the notification, have passed to and become vested in the State. Section 4(a) and 23(1) are as follows :-

> "4. (a) Consequences of the vesting of an estate or tenure in the State. Notwithstanding anything contained in any other law for the time being in force or in any contract, on the publication of the notification under sub-section (1) of section 3, or sub-section (1) or 2 of section 3A the following consequences shall ensue, namely :-
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> (a) Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, Jalkars hats, bazars mela and ferries and all other sairati interests as also his interest in all sub-soil including any rights in mines and minerals whether discovered or undiscovered, or whether being worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure (other than the interests of raiyats or under raiyats) shall, with effect from the date of vesting, vest absolutely in the State free from all incumbrances and such proprietor or tenure holder shall cease to have any interests in such estate or tenure other than the interests expressly saved by or under the provisions of this Act."

Section 24A(1) Determination of compensation of any intermediary of temporarily settled estate - (1) In the case of such intermediary of a temporarily settled estate, the Compensation Officer shall determine the compensation payable in respect of the transference to the State of the interest of the intermediary in such temporarily settled estate, whether let in farm or held in khas, at a sum equal to twenty times of the malikana payable to him during the previous agricultural year and, where the intermediary has taken out the engagement of the lands comprised in such estate for a fixed period on the payment of a fixed jama, also a sum equal to the pro rata refund of the fixed jama paid by him for the unexpired period of the engagement."

It may be noted that ss. 2(jj), 2(jjj), 2A and 24A were inserted in the parent Act by the Bihar Land Reforms (Amendment) Act, 1953 (Bihar Act XX of 1954). Section 4 was also amended by the same Act.

Learned Attorney-General contended (1) that the right to the malikana was an interest in the estates called the Gidhaur estate specified in the notification of July 24, 1953 and on the issue of the notification the right to malikana stood extinguished and (2) alternatively, the Maharaja was an intermediary of temporary settled estates in respect of which the malikana was payable and on the transference of his intermediary interests in those estates, his right to the malikana stood extinguished and he became entitled only to the compensation payable under sec. 24A.

Regulation VIII of 1793 (sec. 43) described malikana as an allowance to proprietors in consideration of their proprietary rights. Baden-Powell's Lands Systems of British India, Vol. II, p. 717 said that malikana in Bengal and places other than the Punjab usually means an allowance to an ex-proprietor by way of solatium for a lost right.

The custom of paying malikana allowance to displaced proprietors may be traced back to the Moghul period. "The claims of the ancient zemindars and village headmen, when thus displaced were usually recognised to the extent of giving them an allowance for subsistence, and sometimes they continued to receive this allowance in the shape of payments from the new occupants called rassoomi-zamindaree." (See Phillips on Law Relating to the Land Tenures of Lower Bengal, p. 126). It was said that "Malikana is the unalienable right of proprietorship." (see the answer of Ghulam Hosein Khan, Appendix No. 16 to Mr. Shore's Minutes of 2nd April 1788 quoted in C.D. Field's Regulations of the Bengal Code p. 717). The Regulations from 1788 onwards recognised this custom. Regulation VIII of 1793, secs. 43 to 47 provided that in the event of the proprietor refusing to accept a reasonable settlement his lands were to be let in farm or held khas. When the lands were let in farm, the farmer was to engage to pay 10% of the jama as malikana to the excluded proprietors in addition to the jama and the Government was to be considered as guarantees for the payment. The malikana was realisable from the farmer as arrears of revenue. When the lands were held in khas 10% of the net collections was to be paid as malikana from the treasury. Section 5 of Regulation VII of 1822 repealed the existing regulations regarding malikana and substituted fresh provisions for such allowance. The new provisions were declared by section 11 of Regulation IX of 1833 to be prospective only and to be applicable solely to the settlements made under them. (see Clarke, Regulations Vol. I p. 71). Regulation VII of 1822 was originally enacted for the ceded and conquered Provinces, Cuttack, Pataspur and it dependencies. It was extended to other Provinces by sec. 2 of Reg. IX of 1825. Later it was repealed as regards the North Western Provinces by Act XIX of 1873 and fresh provisions for allowance to displaced proprietors were substituted. The malikana was for a term of years when the proprietors were dispossessed from management temporarily. It was a permanent grant when the proprietors' rights in their lands were completely extinguished.

The decisions under the Limitation Acts relating to the malikana turned on the particular language of those Acts. Clause 12 of s. 1 of the Limitation Act of 1859 seemed to make it imperative on the courts to deal with malikana as an interest in land and to treat a claim for it as barred if not made within a period of 12 years after the last receipt by the proprietor. (see Herranund Shoo v. Mst. Ozeerun & Ors. [9 W.R. 102.], Govinda Chunder Roy Choudhuri v. Ram Chunder Chowdhury [19 W.R. 95.]. But under the Limitation Act of 1877 the non-receipt of malikana for 12 years did not extinguish the right and malikana could be sued for within twelve years from the time when it became due. (see Hurmuzi Begum v. Hirday Narayan [5 Cal. 921.]. In Jaggo Bai v. Utsava Lal [51 Allahabad 439.] the courts below treated malikana as immovable property and since the point as to its not being immovable property was not taken earlier, the Privy Council did not allow the point to be taken before it for the first time. Nevertheless the Privy Council held that a suit to establish a right as to malikana was not a suit for possession within the meaning of art. 141 and was governed by art. 120 of the Limitation Act of 1908. Though malikana is not a charge on immovable property the explanation to art. 132 of that Act declared that for the purposes of that article, it was "deemed" to be money charged on immovable property.

Malikana is not rent. (see Bhoalee Singh v. Mst. Neemoo Behool [12 W.R. 498.] and Syed Shah Najamuddin Hyder v. Syed Zahid Hossein [8 C.L.J. 300 at 450.]. It is not rent or revenue derived from land and not assessable as agricultural income. (Maharaja P. S. Bahadur v. State of Bihar [18 Patna, 1018.]. In Deo Kuar v. Man Kuar [21 I.A. 148, 160, 161.] malikana was described as a grant of a portion of a land revenue. For purposes of the Pensions Act, 1871 because sec. 3 of the Act interpreted the expression "grant of money or land revenue" to include anything payable on the part of the Government in respect of a right. The Privy Council held that malikana was something payable on the part of Government in respect of a right and therefore a suit relating to malikana was not cognizable by the court without a certificate from the Collector. The plea of bar under the

Pensions Act is not taken in the represent appeal.

Malikana is not an incumbrance on the estate of the proprietor liable to pay it and is not extinguished on the sale of that estate for recovery of arrears of land revenue under Act XI of 1859. (see Mahendra Narayan Roy Chowdhuri v. Abdul Gafur Choudhary [35 C.W.N. 1233.]. The person in receipt of a permanent malikana is not a proprietor of the estate for which malikana is payable and has no title to the alluvial accretion to the estate. (see Soudamini Dassya v. Secretary of State for India [50 Cal. 522, 538, 545].

The proprietors of the Gidhaur estate in Bihar are in receipt of a permanent malikana for over a century. The origin of this malikana allowance is not known. From time immemorial it has been customary in Bihar to pay a permanent malikana allowance to ex-proprietors in lieu of their lost proprietary right. Phillips in his Law Relating to the Land Tenures of Lower Bengal, pp. 144, 147, 269, said that the proprietors of the soil in Bihar universally claimed and possessed a right of malikana and he endeavoured in vain to trace its origin in Bihar. The malikana right of the excluded proprietors in Bihar was acknowledged in the Regulations passed on August 8, 1788. At the time of Permanent Settlement, the new grantees were forced to acknowledge this right. (see Baden-Powell, Land-System of British India, Vol. I. pp. 516, 517). The Bihar Board of Revenue Misc. Rules 1939, art. 342 p. 166 divides malikana into two classes. Malikana of the first class is for a term of years only, that is, during the currency of a settlement. Malikana of the second class is permanent. It states that "the Bihar malikana falls under this class and is a compensation permanently granted to the proprietors .... It is of a pensionary nature and does not depend upon collections." The permanent malikana is payable at the treasury on April 1, and October 1, every year on presentation of pay orders issued by the Collector accompanied by a life certificate of the recipient.

There can be no doubt that the malikana payable to the proprietors of the Gidhaur estate is a permanent grant of money in lieu of their proprietary rights in lands originally held by them. The proprietors retained certain estates. On the publication of the notification under s. 3 of the Bihar Land Reforms Act, 1950 the interest of the Maharaja in those estates was extinguished. But the malikana payable to him is not an interest in those estates and did not cease on the issue of the notification.

Annexure A to the writ application shows that cess was deducted from the malikana. Under secs. 5 and 421 of the Cess Act., 1880 cess is charged on immovable property and is payable by the holder of an estate or tenure or chaukidari chakran lands and by a cultivating raiyat. It is not known under what circumstances cess used to be deducted from the malikana. From the fact that cess was so deducted it is not possible to hold that malikana is an interest in the estates held by the Maharaja.

In this Court the appellant raised the second contention for the first time. The learned Attorney-General contended that the malikana was payable in respect of certain other estates, that the Maharaja should be regarded as an intermediary of those estates and that on the vesting of those estates in the Government the right to malikana ceased and the Maharaja became entitled to compensation only under sec. 24A of the Bihar Land Reforms Act, 1950. The State of Bihar has filed a petition asking for an order admitting certain documents as additional evidence. We have allowed this petition. The first document is a letter of the Collector, Monghyr, stating that the Gidhaur estate was getting malikana in respect of 17 tauzis noted in the margin. The second document is the khewat of those tauzis. They show that various persons other than the Maharaja were the proprietors of the estates comprised in the tauzis. The petition states that all these estates have been notified under sec. 3 and have now vested in the State Government. The third document

is the notification published on July 24, 1953 showing the estates of which the Maharaja was the proprietor and which have nor vested in the State Government. On the publication of the notification under sec. 3, all the estates in respect of which the malikana is payable including the interest of any intermediary therein vested in the Government free from all incumbrances. But the Maharaja is not a proprietor, tenure holder or an intermediary of those estates. The malikana is not rent or income derived from the estates. Nor is his right to the malikana an incumbrance on them. The Maharaja's right to the malikana is not an intermediary interest in the estates and did not vest in the Government. Consequently he has no right to claim compensation for the malikana under s. 24A. That section provides for determination of compensation payable to the intermediary of a temporarily settled estate is respect of the transference to the Government of the interest of the intermediary in such estate. The Maharaja had no intermediary interest in the estates for the transference of which he could claim any compensation under sec. 24A.

In State of Uttar Pradesh v. Kunwar Sri Trivikram Narain Singh [[1962] 3 S.C.R. 213, 226-228.] this Court held that an allowance of a fixed sum of money computed on the basis of 1/4th share of the net revenue of certain estates payable by the Government to the ex-jagirdars as compensation for abandonment of their right in those estates was not a right or privilege in respect of land in any estate or its land revenue within the meaning of s. 6(b) of the Uttar Pradesh Zemindari Abolition and Land Reforms Act, 1951, and on the issue of a notification vesting those estates in the Government the right to the allowance did not cease. The allowance in that case was described as a pension. It may be that the allowance was not strictly a malikana. Nevertheless the case is instructive. It shows that an allowance paid to ex-jagirdars in consideration of the extinction of their rights in land is not an interest in the land. The permanent malikana stands on the same footing. It is an allowance paid to ex-proprietors for extinguishment of their right to the estate formerly held by them. It is not an interest in that estate, nor an incumbrance on it, and does not cease on the vesting of the estate in the Government.

In the result, the appeal is dismissed with costs.

Appeal dismissed.##

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